UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,978	04/12/2001	Jerry A. Jenks	698	2070

7590 04/03/2003

Law Offices of John D. Gugliotta, P.E., Esq.
202 Delaware Building
137 South Main Street
Akron, OH 44308

EXAMINER
LUEBKE, RENEE S

ART UNIT	PAPER NUMBER
2833	

DATE MAILED: 04/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 14

Application Number: 09/833,978
Filing Date: April 12, 2001
Appellants: JENKS

John Gugliotta
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 18, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal, is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on February 7, 2003 has been entered.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of the claims in each group stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

2706225	Freeman	4/1955
4463228	Osika	7/1984
3974347	Lockard	8/1976

(10) Grounds of Rejecti n

The following grounds of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Freeman. In regard to claim 1, Freeman comprises a plug 17, 18 at one end, a receptacle 27, 28 at the other end, and a rocker switch 41 allowing the user to interrupt electrical continuity as claimed. The plug and receptacle ends are in rigid mechanical contact as claimed.

Claims 2-4, 6, 7, 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman in view of Osika. The switch of Freeman comprises a housing 22, a pair of male blade connectors 17, 18, female receptacle connectors 19, 20, and a switch 41, 36, etc. accessible through the top surface. Freeman lacks ground terminals since they were not common at the time. However, ground terminals comprising receptacles/prongs are now common. As shown by Osika, the addition of a ground prong adjacent the appropriate circuit prongs, and connected to respective female receptacle connectors in a non-switched manner, is well known. As taught by Osika, it is used on devices similar to that of Freeman as a matter of safety to the user of the circuit.

Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman and Osika in view of Lockard (see Fig. 3). Lockard comprises a slightly different rocker switch from that shown by Freeman. The switch of Lockard comprises flat actuation surfaces that intersect in the manner claimed, a cam shaped arcuate body 22a, a first contact 62 supported on the body, and a second contact 48a. To use this known arrangement in place of that of Freeman is seen to have been an obvious alternative since such an arrangement requires fewer parts and therefore less cost and fewer assembly steps.

(11) Resp nse to Arguments

Claim 1 is anticipated by Freeman because it comprises a plug 17, 18 at one end, a receptacle 27, 28 at the other end, and a rocker switch 41 allowing the user to interrupt electrical continuity as claimed. Further, the plug and receptacle ends are in rigid mechanical contact as claimed.

Appellant argues that Freeman "lacks the 120 VAC ground plug mechanism." This may be true. However, claim 1 does not require a ground plug mechanism. Appellant has not shown any claimed element that is not shown by the reference. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claims 2-4, 6, 7, 9 and 12 are obvious in view of Freeman and Osika. As noted above, the switch of Freeman comprises a housing, a pair of male blade connectors, female receptacle connectors, and a switch accessible through the top surface. Freeman lacks only ground terminals. However, as shown by Osika, ground terminals are known to be used on devices similar to that of Freeman as a matter of safety to the user of the circuit.

Appellant argues that Freeman "fails to disclose ground prongs integral to and extending from the body" and Osika "fails to disclose a ground prong integral to and extending from a first end of the body." Initially, however, it is noted that the claims do not require the ground prong (or any other terminal) to be "integral" with the body. More to the point, Freeman teaches male terminals that extend outward from the first end of the body and female terminals that penetrate the second end of the body. In addition, Osika teaches the use of a ground prong, and a ground receptacle in communication with the ground prong, on a similar device. Although neither reference discloses all of the claimed elements, the combination of references teaches that the combination of claimed elements would have been obvious. Appellant

has failed to address the combined teachings of Freeman and Osika in regard to independent claim 2. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claims 7-11 are obvious over Freeman and Osika in view of Lockard (see Fig. 3). Lockard comprises a slightly different rocker switch from that shown by Freeman. This alternative is seen to have been an obvious alternative to that of Freeman. The switch of Lockard comprises flat actuation surfaces that intersect in the manner claimed, a cam shaped arcuate body 22a, a first contact 62 supported on the body, and a second contact 48a.

In regard to claim 7, appellant states that the present invention includes a rocker "supported about a pivoting axle, providing angular movement to the rocker switch to facilitate opening and closing." Both Freeman and Lockard comprise rockers of this nature. This fact is not disputed by appellant.

In regard to claim 8 appellant argues that Lockard lacks a pair of flat intersecting surfaces since there are notches present. However, as seen by Fig. 3, the rocker of Lockard does comprise flat intersecting surfaces between the notches. This structure meets the claimed limitation.

In regard to claim 9, appellant cites a number of alleges differences between Lockard and the present invention. However, the claim does not include these limitations. Claim 9 merely requires "a lower portion of said rocker switch comprises a cam shaped arcuate body." This clearly is met by the arcuate shape 22a which is located on a lower portion of the rocker and which pushes (or cams) the contact 46a.

Claim 10 requires a first contact 46 on the body 42, a second contact 48a, and a third contact 48b that are all electrically connected when the rocker switch "is articulated." As noted in the Advisory action, such an arrangement

will short out the circuit and is not, apparently, what appellant intends. However, the rocker switch of Lockard does comprise a first contact 26 that bridges from a blade connector 48a to a respective receptacle connector 46a in the manner apparently intended by appellant. Contrary to appellant's arguments, the contacts 46a, 48a of Lockard are not more separated than are the contacts 48a, 14 of the present invention.

In regard to claim 11 appellant argues that Lockard does not provide receptacles. However, the base reference Freeman provides this structure. Appellant has not addressed the combination of references that render this claim obvious.

In response to appellant's general suggestion that the examiner has combined an excessive number of references, it is noted that the three references used in the present rejection are hardly excessive. The base references Freeman teaches the majority of the claimed device; the two secondary references teach obvious alternatives for two different features. Even so, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning and that there is no reason to combine the references, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the present case, motivations to combine the

references were indicated in the initial rejections and are found above. In summary, it would have been obvious to add a ground circuit such as that of Osika, as is well known in the art, for safety purposes. The well known rocker arrangement of Lockard is seen to have been an obvious alternative as a matter of convenience since it requires fewer parts and therefore less cost and fewer assembly steps.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Renee S. Luebke
Primary Examiner

rsl
April 2, 2003

Conferees:

Paula Bradley
Primary Examiner

Brian Sircus
Primary Examiner

Law Offices of John D. Gugliotta, P.E., Esq.
202 Delaware Building
137 South Main Street
Akron, OH 44308